

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



AB-12 (Sub-No. 148X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY--ABANDONMENT EXEMPTION
--ABANDONMENT EXEMPTION--
IN TYLER, JASPER, AND ANGELINA COUNTIES, TX

ENTERED
Office of Proceedings

PETITION TO REOPEN

FEB 13 2004

Part of
Public Record

Comes now the Texas Department of Transportation ("TxDOT"), by and through its undersigned attorney, and files this Petition to Reopen pursuant to the provisions of 49 C.F.R. § 1152.29(e) (2). By filing this Petition, TxDOT provides notice that it intends to terminate trail use on and over that portion of the right-of-way between MP 94.89, station 3417+31, as shown on ROW and Track Map, sheet V3-24, and MP 104.20, station 3907+86, as shown on ROW and Track Map, sheet V3-27. TxDOT will continue trail use over the remaining portions of the right-of-way between MP 40.126, near Loeb Jct., and MP 94.89, and between MP 104.20 and MP 132.12, at Dunagan, in Tyler, Hardin, Jefferson, Jasper, and Angelina Counties, TX.

Therefore, TxDOT respectfully requests the Surface Transportation Board ("Board") vacate that portion of the Notice of Interim Trail Use ("NITU") (issued by the Interstate Commerce Commission ("ICC") in the above-captioned proceeding on July 14, 1994), pertaining to the right-of-way between MP 94.89 and MP 104.20. A copy of the NITU is attached as required by page 2 of the NITU. It is requested that the portion of

the right-of-way between MP 94.89 and MP 104.20 of the NITU be vacated on the 30th day following the filing of this Petition to Reopen.

Background

On May 25, 1994, the Texas Department of Transportation ("TxDOT") late filed a request for issuance of a NITU for that portion of the Southern Pacific Transportation Company's ("SP") Rockland Branch rail line that extended between MP 76.85, at or near the Hillister rail station, and milepost 108.90, at or near the Dolan rail station, in Tyler, Jasper, and Angelina Counties, TX.

As explained in the ICC's Decision (slip op. at 1 and n.1):

The Rockland Branch originally extended for approximately 90 miles between Loeb Junction and Dunagan, TX. The line segment at issue here is the middle section of the Rockland Branch. ...*

* The former 36.72-mile southern segment extending between milepost 40.126, near Loeb's Junction, and milepost 76.85, near Hillister, was authorized to be abandoned in *Southern Pacific Transportation Company--Abandonment Exemption--in Tyler, Hardin and Jefferson Counties, TX*, Docket No. AB-12 (Sub-No. 134X), (ICC served Feb. 4, 1991). On April 18, 1994, SP petitioned to exempt the abandonment of the remaining 23.22-mile northern segment between milepost 108.90, at Dolan, and milepost 132.12, at Dunagan, in *Southern Pacific Transportation Company--Abandonment Exemption--in Angelina County, TX*, Docket No. AB-12 (Sub-No. 153X). TxDOT has made similar Trails Act filings in both proceedings.

After SP confirmed that it had not fully abandoned the line, and expressed its willingness to negotiate with TxDOT for interim trail use, the ICC issued its Decision and Notice of Interim Trail Use, service date of July 14, 1994. Thereafter, TxDOT and SP reached a mutually acceptable final agreement whereby TxDOT acquired SP's interest in the rail corridor.

When it filed its request for the issuance of a NITU, TxDOT advised the ICC that it was seeking to expand its emergency evacuation route system along the Texas gulf coast. TxDOT has now concluded that it does not require the acreage that lies between MP 94.89 and MP 104.20 in order to complete its project. Therefore, it wishes to release that acreage from the NITU issued in the instant proceeding.

Having acquired SP's interest, and having determined that it now wishes to vacate only the portion of the NITU between MP 94.89 and MP 104.20, TxDOT requests that the Board, pursuant to the provisions of 49 C.F.R. § 1152.29(d)(2), reopen the exemption proceeding and vacate that portion of the NITU.

To satisfy the requirements of 49 C.F.R. § 1152.29(d)(2), the Board should send copies of its decision permitting the immediate abandonment for the involved portion of the right-of-way between MP 94.89 and MP 104.20 to the following entities:

- (1) The abandonment exemption applicant
Southern Pacific Transportation Company
c/o Union Pacific Railroad Company
Mack H. Shumate, Jr.
101 North Wacker Drive, Room 1920
Chicago, IL 60606
- (2) The owner of the right-of-way
TxDOT
c/o Richard H. Streeter
Barnes & Thornburg
750 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 408-6933
- (3) The current trail user
Texas Department of Transportation
c/o Richard H. Streeter
Barnes & Thornburg
750 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 408-6933

Should further information be required, please contact the undersigned.

Respectfully submitted

A handwritten signature in black ink, appearing to read "R. H. Streeter".

Richard H. Streeter
Barnes & Thornburg
750 17th Street, N.W.
Suite 900
Washington, D.C. 20006
(202) 408-6933

Dated: February 13, 2004.

DO

SERVICE DATE

INTERSTATE COMMERCE COMMISSION

JUL 14 1994

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-12 (Sub-No. 148X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY--ABANDONMENT EXEMPTION--
IN TYLER, JASPER, AND ANGELINA COUNTIES, TX

Decided: June 30, 1994

A notice of exemption under 49 CFR 1152 Subpart F--~~Exempt Abandonments and Discontinuances~~ was served January 7, 1993, and published in the Federal Register on January 6, 1993 (58 FR 582) with respect to the abandonment by Southern Pacific Transportation Company (SP) of a 32.05-mile portion of its Rockland Branch rail line. The line extends between milepost 76.85, at or near the Hillister rail station, and milepost 108.90, at or near the Dolan rail station, in Tyler, Jasper, and Angelina Counties, TX. The exemption became effective on February 6, 1993.

On May 25, 1994, the Texas Department of Transportation (TxDOT) late filed a request for issuance of a notice of interim trail use/rail banking (NITU) for the entire line under the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). TxDOT states that it is actively seeking to expand its emergency evacuation route system along the Texas gulf coast. One alternative considered for this purpose is SP's entire Rockland Branch.

The Rockland Branch originally extended for approximately 90 miles between Loeb Junction and Dunagan, TX. The line segment at issue here is the middle section of the Rockland Branch. Assertedly, TxDOT did not file an earlier trail use request because it did not want to acquire less than the entire branch. TxDOT submits that its late-filed request should be accepted because it recently learned that the remaining segments of the Rockland Branch either have been abandoned or have been proposed for abandonment.¹ TxDOT states that the Commission still retains jurisdiction over the right-of-way because SP has not fully abandoned the line. In this regard, it notes that track materials are still in place along most of the right-of-way and SP has been actively negotiating with TxDOT to transfer all of the property to TxDOT under the Trails Act.

TxDOT submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. On June 10, 1994, SP confirmed that it had not fully abandoned the line, and expressed its willingness to negotiate with TxDOT for interim trail use.

¹ The former 36.72-mile southern segment extending between milepost 40.126, near Loeb's Junction, and milepost 76.85, near Hillister, was authorized to be abandoned in Southern Pacific Transportation Company--Abandonment Exemption--in Tyler, Hardin, and Jefferson Counties, TX, Docket No. AB-12 (Sub-No. 134X), (ICC served Feb. 4, 1991). On April 18, 1994, SP petitioned to exempt the abandonment of the remaining 23.22-mile northern segment between milepost 108.90, at Dolan, and milepost 132.12, at Dunagan, in Southern Pacific Transportation Company--Abandonment Exemption--in Angelina County, TX, Docket No. AB-12 (Sub-No. 153X). TxDOT has made similar Trails Act filings in both proceedings.

Late-filed trail use requests may be accepted as long as the Commission retains jurisdiction over the right-of-way¹ and the carrier is willing to enter into negotiations. Accordingly, a NTU will be issued under 49 CFR 1152.29. The parties may negotiate a trail use agreement during the 180-day period following service of this decision. If the parties reach a mutually acceptable final agreement, our further approval is unnecessary. If no agreement is reached within the time allotted, SP may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The notice exempting SP's abandonment of the above-described line is vacated to the extent necessary to implement interim trail use/rail banking as set forth below.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision, interim trail use may be implemented. If no agreement is reached by that time, SP may fully abandon the line.
7. This decision is effective on the date of service.

By the Commission, Joseph M. Dettmar, Acting Director,
Office of Proceedings.

Sidney L. Strickland, Jr.
Secretary.

(SEAL)

¹ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-8 (1967); See Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1967); and Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

CERTIFICATE OF SERVICE

I hereby certify that on the 13th of February, 2004, I served a true copy of the foregoing "Petition to Reopen" by first class mail, postage prepaid to the following:

Walter Brocato
Office of the Attorney General
Transportation Division
P.O. Box 12548
Austin, Texas 78711


Robert S. Brams
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350

William Shapiro
U.S. Department of Justice
P.O. Box 663
Washington, D.C. 20044

Mack Shumate, Jr.,
Senior General Attorney
Law Department
Union Pacific Railroad
101 North Wacker Drive, Room 1920
Chicago, Illinois 60606

And by hand delivery upon the following:

Evelyn G. Kitay
Office of General Counsel
Surface Transportation Board
1925 K Street, N.W., Room 600
Washington, D.C. 20423


Richard H. Streeter